IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 78 OF 2002
WITH
CROSS OBJECTION NO.18 OF 2005

Deputy Chief Executive
Officer, Goa, Daman and Diu,
I.D.C.(Shri Saraswati Mandir,
building), Panaji. ... Appellant

versus

1. Shaik Mohidin Shaik
Dawood(since deceased),
represented by L.Rs.

1a.Mrs. Hazirabi Shaik Mohidin,
(widow), r/o Chicalim, Goa,
(deleted as she is known as
party no.2).

1b.Shri Abdul Azim Shaik Mohidin
(son), and his wife Mrs. Tahira
Azim Shaik, r/o Chicalim, Goa.

1c. Shri Anwarali Shaik Mohidin,
(son) and his wife, Mrs.
Mehrunnisa Anwarali Shaik,
r/o Dabolim, Goa.

1d. Shaik Iqbal Shaik Mohidin,
(son), and his wife Mrs.
Shireen Iqbal Shaik,
r/o Near Pai Hospital,
Vaddem, Goa.

1e. Mrs. Zahida Shaik Hussain,
(daughter) and her husband,
Mr. Shaik Hussain Moosa,

r/o Destero, Vasco-da-Gama,
Goa.

1f. Mrs. Ramizabi Sheriff
Shaikh(daughter) and
her husband, Mr. Shaikh
Mohamed Sheriff,
r/o Gaffoor Manzil,
Curchorem, Goa.

1g. Mrs. Khatoonbi Nazir Sayed,
(daughter) and her husband,
Mr. Nazir Kasim Sayed,
r/o Pai Nursing Home,
Vaddem, Goa.

1h. Mrs. Shamshun Muktar Shaikh,
(daughter) and hewr husband,
Mr. Muktar Shamshuddin Shaikh
r/o H. No. 371, Hospital road,
Kakora, Curchorem, Goa.

1i. Mrs. Hanifabi Mujib Khan,
(daughter) and her husband,
Mr. Mujib Hyder Khan,
r/o Hospital road, Opp.
Central Bank, Kakoda,
Curchorem, Goa.

2. Mrs. Hazirabi Shaik Mohidin,
(widow), r/o Chicalim, Goa,
through their Power of Attorney,
Shri Abdul Azim Shaikh Mohidin,
r/o Chicalim, Mormugao, Goa.

3. Deputy Collector(L.A.),
& Land Acquisition Officer,
Panaji. ... Respondents

Mr. M. S. Sonak and Mr. P. S. Rao, Advocates for the Appellant.

Mr. V. B. Nadkarni, Senior Advocate with Mr. J. Cardozo, Advocate for Respondent Nos.1(b) to 1(i) and 2.

CORAM : R. M. LODHA &
N. A. BRITTO, JJ.

DATE : 24TH OCTOBER,2005.

ORAL JUDGMENT(PER R.M.LODHA,J.)

For the purpose of expansion of Sancoale Industrial Estate, the Government of Goa issued a Notification dated 27-5-1987 which was published in the Official Gazette on 27-8-1987 under Section 4(1) of the Land Acquisition Act proposing acquisition of 91,176 sq. metres of land from survey no.185, Village Sancoale. Upon conclusion of the acquisition proceedings, the Land Acquisition Officer awarded compensation at the rate of Rs.8/- per sq. metre in respect of plain and bharad land, Rs.6/- per sq. metre for paddy field and Rs.5/- per sq. metre for the remaining land.

2. The claimants(respondents herein) were concerned with 85,856 sq. metres of the acquired land being owner and in

possession of the said land. The remaining 5,300 sq. metres was a tenanted paddy field in occupation of one Victor Rodrigues. For the land admeasuring 85,856 sq. metres, the Land Acquisition Officer awarded compensation, as indicated above, at the rate of Rs.8/- per sq. metre. The claimants were not satisfied with the offer and sought reference to the Civil Court by claiming compensation at the rate of Rs.100/- per sq. metre.

3. Before the Reference Court, on behalf of the claimants, their power of attorney Abdul Azim Sheikh Mohidin(A.W.1) was examined. The claimants also examined the approved valuer, Shakaram Bende(A.W.2), Shantaram Navelkar(A.W.3), Philip D'Sa (A.W.4), K. Boje(A.W.5) and Abdul Sattar(A.W.9). The claimants relied upon nine Sale Deeds. These Sale Deeds were dated 2-6-87 (Exhs.AW1/F and AW1/G), the Sale Deeds dated 15-6-87(Exhs.AW1/J) and AW1/K), the Sale Deed dated 16-6-87(Exh.AW1/L) and the two Sale Deeds dated 21-8-87(Exhs.AW1/M and AW1/N). The claimants also produced Valuation Report(Exh.AW2/B).

4. In rebuttal, H. V. Manjrekar(R.W.1) was examined by the present appellant.

5. The IInd Additional District Judge, South Goa, Margao (Reference Court) determined the market value of the acquired land at the rate of Rs. 35/- per sq. metre and granted statutory benefits to the claimants vide Judgment and Award dated 31-10-2001. Aggrieved by the said Judgment and Award, the Acquiring Body has preferred the First Appeal. The claimants have filed Cross Objections seeking enhancement of the compensation for the acquired land.

6. We heard Mr. M. S. Sonak, the learned Counsel for the Acquiring Body and Mr. V. B. Nadkarni, the learned Senior Counsel for the claimants.

7. The question that falls for determination before us is whether the market value of the acquired land fixed by the Reference Court at the rate of Rs.13/- per sq. metre needs modification(southward or northward).

8. On behalf of the Acquiring Body, Mr. M. S. Sonak, the learned Counsel argued that the market rate fixed at Rs.35/- per sq. metre is quite high. He would submit that the sale instances relied upon by the claimants do not provide the basis to find out the market value of the acquired land on the date of publication of Notification under Section 4(1). According to

him, none of the Sale Deeds is comparable because the sale instances pertain to developed small plots of land while the acquired land is a large tract of undeveloped land.

9. On the other hand, the learned Senior Counsel for the claimants urged that on proper co-relation the sale instances do provide the index of the market value of the acquired land and keeping that in mind that those lands were sold by a consideration of Rs.100/- per sq. metre to Rs.130/- per sq. metre, the market value of the acquired land ought to have been fixed at higher rate. He would contend that the deductions made, both for largeness of area as well as the development is not permissible.

10. In **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer, Poona and another**, AIR 1988 SC 1652, the Supreme Court highlighted the factors that need to be borne in mind for arriving at the market value of land. In paragraph 4 of the report, the Supreme Court held thus:-

> "(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award

unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under S.4 of the Land Acquisition Act(dates of Notifications under Ss.6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation(date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle

(ii)proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land

> under acquisition by placing the two in juxtaposition.
>
> (12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.
>
> (13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors".

11. The exposition of law in the case of **Chimanlal Hargovinddas** has been consistently followed. It is true that in a very recent Judgment in the case of **Viluben Jhalejar Contractor(D) by L.Rs.** v. **State of Gujarat,** 2005 AIR SCW 2107, the Judgment given in **Chimanlal Hargovinddas** has not been referred, but the same legal position as was propounded in **Chimanlal Hargovinddas** has been stated. The Supreme Court in paragraphs 20 and 21 of the Report observed thus:-

> "20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the

land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	Negative factors
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-a-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser

(vii) special value for an owner of an adjoining property to whom it may have some very special advantage.

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price".

12. The few other Judgments were cited at the Bar. We do not deem it necessary to multiply the authorities and lengthen our Judgment. The reference to the two Judgments in the case of **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer** and **Viluben Jhalejar Contractor** v. **State of Gujarat**(supra) must suffice. Both these Judgments reflect the consistent legal provision in consideration of the sale instances of a smaller plot of land, proximate to the situation and proximate to the time, as relevant to find out the market value of large tract of land where other

relevant evidence is not available.

13. Against the backdrop of the aforesaid legal position, adverting to the evidence on record, it is seen that the acquired land is a large tract of land; it admeasures 85,856 sq. metres. The acquired land is quite interior from the main road. Though, there is conflicting evidence about the acquired land having access through a tar road, from the evidence, it is amply clear that the acquired land does not have direct motorable road from the main road. In so far as the civil amenities are concerned, the evidence suggests that the amenities like transport, water, electricity, temple, mosque and church etc. are at a distance of half a kilometre to one kilometre. The Dabolim Railway Station is also about 0.7 kms. In so far as the nine Sale Deeds which have been produced by the claimants are concerned, these relate to small plots of land of about 225 to 355 sq. metres. Those plots of lands at the time of sale were fully developed and abutting the main road. The plots that have been sold by these Sale Deeds are at a distance of about 0.8 kms from the acquired land. Strictly speaking, the sale instances produced by the claimants cannot be said to be comparable to the acquired land but asking the claimants to produce the sale instance of similarly situated large tract of land was asking the impossible. For want of definite evidence regarding sale of similar situated

plots, we are of the view that the Sale Deeds produced by the claimants can be co-related to find out the index of the market value. The broad factors that need to be kept in mind are that the Sale Deeds relate to developed small plots of land adjacent to the main road; the acquired land on the other hand is interior and one has to travel almost 1/2 km. to 3/4 kms. inside the main road to reach the acquired land. The acquired land is totally undeveloped though it is close to the already existing Sancoale Industrial Estate. The small plots of which the Sale Deeds were produced were sold for a price between Rs.100/- to Rs.132/- per sq. metre. The Division Bench Judgment of this Court in the case of **State of Goa and another** v. **Smt. Olga Seco Gomes da Costa**,1998(1) G.L.T.324 held that where the Sale Deed of a developed plot is treated a comparable sale instance, 40% deduction needs to be made to find out the market value of undeveloped land. Then it cannot be overlooked that besides that the acquired land is undeveloped, there is difference in the location as well. As already indicated above, the Sale Deeds relate to the sale of plots of land which abut the main road whereas the acquired plot of land is situated in the area interior at a distance of more than half a kilometre from the main road. This aspect also has to be borne in mind to arrive at the index of market value. Having taken into consideration all these aspects, in our considered view, it would be reasonable and fair to hold the index of the market value of small

undeveloped plots of land at the rate of Rs.50/- per sq. metre for the land situated a bit interior to the main road.

14. Having fixed the market value of the undeveloped land for small plot at the rate of Rs.50/- per sq. metre, some deduction shall have to be made keeping in view the largeness of the area. The acquired land is over 85,000 sq. metres. The contention of the learned Senior Counsel for the claimants that there cannot be double deduction for development as well as largeness of the area cannot be accepted.

15. In **Viluben Jhalejar Contractor** (supra), this was one of the contentions raised by the learned Senior Counsel for the claimants before the Supreme Court. The contention was that the deduction, both for largeness and development were not possible. In paragraph 8 of the Report, the Supreme Court noted the contention of the learned Counsel for the claimants thus:-

> "Mr. Ranjit Kumar, learned senior counsel appearing on behalf of the Claimants-Appellants, on the other hand, would contend that the High Court failed to take into consideration the fact that the lands situated in village Pratappura were fully developed whereas lands situated in Godhra Bhagal were not so developed and in that view of the matter it was

> not a case where the amount of compensation should have been determined upon deduction to the extent of 33% and 25% respectively for the large and small area. It was further contended that deduction both for the largeness of the area as well as the development is not permissible. Reliance in this connection has been placed The Registrar, University of Agricultural Sciences, Dharwad v. Balanagouda(Dead) By LRs. & Ors. (Civil Appeal Nos.62-65 of 2000 disposed of on 10th December,2003".

16. Negativing in the said contention, the Supreme Court in para 30 of the Report held thus:-

> "In the Registrar, University of Agricultural Sciences, Dharwad (supra), whereupon Mr. Ranjit Kumar placed strong reliance, the Court noticed that if the acquisition is made for agricultural purpose, question of development thereof would not arise; but if the sale instance was in respect of small piece of land whereas the acquisition is for a large piece of land, although development cost may not be deducted, there has to be deduction for largeness of the land and also for the fact that these are agricultural lands. In that view of the matter, deduction at the rate of 33% made by the High Court was upheld. It may

> not, therefore, be correct to contend, as has been submitted by Mr. Ranjit Kumar, that there cannot be different deductions, one for the largeness of the land and another for development costs".

17. It would be thus seen that there is no legal impediment in giving different deductions; (one) for the largeness of the land and (two) for the development costs. Having fixed the market value of the undeveloped small plot of land at the rate of Rs.50/- per sq. metre, now, the deduction needs to be given for the largeness of the area; the acquired land is 85,500 sq. metres.

18. Quite a few Judgments were cited before us about percentage of deduction for the largeness of area. It needs no emphasis that each case would depend upon the facts and circumstances of its own but by and large one third deduction seems to be the norm.

19. In **Viluben Jhalejar Contractor**(supra) the Supreme Court has referred to its previous decisions in this regard namely, **Kasturi** v. **State of Haryana,** (2003) 1 SCC 354, **Tejumal Bhojwani(dead) through LRs. and Others** v. **State of U.P.**,(2003) 10 SCC 525, **V. Hanumantha Reddy(Dead) by LRs.** v. **Land Acquisition Officer & Mandal R. Officer**(2003) 12 SCC

642, **H.P. Housing Board** v. **Bharat S. Negi and Others,**(2004) 2 SCC 184 and **Kiran Tandon** v. **Allahabad Development Authority and another** (2004) 10 SCC 745). In this connection, in paragraph 29 in the case of **Viluben Jhalejar Contractor**(supra) the Supreme Court noticed thus:-

> "We are not, however, oblivious of the fact that normally one-third deduction of further amount of compensation has been directed in some cases.(See Kasturi and Others v. State of Haryana(2003) 1 SCC 354, Tejumal Bhojwani(Dead) Through LRs. and others v. State of U.P.(2003) 10 SCC 525, V. Hanumantha Reddy (Dead) by LRs. v. Land Acquisition Officer & Mandal R. Officer(2003 12 SCC 642, H.P.Housing Board v. Bharat S. negi and others,(2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority and another(2004) 10 SCC 745".

20. We are, therefore, of the view that there has to be deduction for largeness of the land by one-third which is normal deduction; there being no exceptional reason for deviation from the normal norm. By giving deduction of one-third, in our opinion, the market rate of the acquired land works out to be Rs.35/- per sq. metre. This is what has been determined by the Reference Court. Though, we have arrived at that rate a little bit differently, we find that the ultimate conclusion reached at by the

Reference Court fixing the market value at the rate of Rs.35/- per sq. metre for the acquired land is reasonable and realistic and it warrants no interference by us.

21. Consequently, the First Appeal as well as the Cross Objections are dismissed with no order as to costs.

R. M. LODHA, J.

N. A. BRITTO, J.

RD.